

GUIDELINES FOR THE BEDFORD LANDING WATERFRONT HISTORIC DISTRICT

**NEW BEDFORD HISTORICAL COMMISSION
NATIONAL PARK SERVICE**

GUIDELINES FOR THE BEDFORD LANDING-WATERFRONT HISTORIC DISTRICT

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Forward

The New Bedford Historical Commission and the National Park Service have produced this publication for property owners and tenants in the Bedford Landing -Waterfront Historic District. This publication explains the administrative and design requirements in the District.

Any questions in regards to the District should be addressed to:

Secretary, New Bedford Historical Commission
33 William Street, New Bedford, MA 02740
508.996.4095 ext.11

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I. THE DISTRICT

Introduction

Since 1972 the Bedford Landing-Waterfront Historic District has been protected by the provisions of the New Bedford City Code, Sections 2-150 through 2-157 which enacted the enabling legislation, Chapter 40C of the Massachusetts General Law. The New Bedford Historical Commission (NBHC) administers this legislation, which protects the district from misguided alterations and development. The mayor with the approval of the city council appoints this seven-member commission. It is this city commission that is responsible for all of the design review issues in the District.

New Bedford Whaling National Historical Park was created through the Omnibus Parks and Public Lands Management Act of 1996 (Section 511 - Public Law 104-333). The park preserves for the benefit and inspiration of the people of the United

States certain districts, structures, and relics associated with the history of whaling and related social and economic themes in America. In order to ensure that the built environment of the park is maintained and developed according to The Secretary of the Interior's Standards for the Treatment of Historic Properties the park relies on the local historic district commission to regulate and review all proposed changes to the exterior of buildings, structures, and sites. The Park and District boundaries are contiguous.

History and Legislation of the Bedford Landing -Waterfront Historic District

The Bedford Landing-Waterfront Historic District, with its narrow streets and uniform alignment of buildings, is the remainder of New Bedford's nineteenth century whaling district and central commercial area. The streets are now lined with one-, two-, and three-story Federal style warehouses and residences, Greek Revival commercial and

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institutional buildings, and late nineteenth century mercantile blocks. From the east-west streets there is still a view of New Bedford harbor and the Acushnet River. The national significance and integrity of the built environment of the District were key factors that led to the establishment of New Bedford Whaling National Historical Park.

It is this architectural integrity and historic setting which the community seeks to preserve by preventing insensitive alteration or destruction. Laws for the protection of architecturally historic areas were first adopted in Charleston, South Carolina in 1931. Massachusetts' first protective laws were proposed in 1955 and the first areas to be protected under Special Acts of the legislature were the Beacon Hill District in Boston and the Nantucket Historic District. These Acts developed to become the Historic Districts Act, Chapter 40C of the Massachusetts General Laws in 1960, further amended and strengthened in 1975 and 1983.

Commonly referred to simply as "Chapter 40C," this legislation allows communities throughout the Commonwealth to establish their own Historic Districts and their own Commissions to regulate any proposed changes to the visible exterior of buildings, structures, and sites within those Districts in order to preserve architectural integrity and historical value.

New Bedford established the Bedford Landing-Waterfront Historic District and the New Bedford Historical Commission in 1972 by an act of the New Bedford City Council. This legislation was, in part, a reaction to the urban renewal program that destroyed entire blocks of New Bedford's architectural heritage. New Bedford Whaling National Historical Park was established in 1996 with boundaries that included the District as well Route 18 and land to the north of Elm Street that included the parking garage and Standard Times Building. In 2001 by an act of the New Bedford City Council the boundaries of the District were modified to be contiguous with the boundaries of the Park.



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Bedford Landing-Waterfront Historic District

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Changes Requiring Historical Commission Approval

Under the By-Laws of the New Bedford Historical Commission and Chapter 40C, the Commission has the authority to review the following in the District:

1. Changes of any kind to any exterior portion of a building that is visible from a public way. A public way is defined as any sidewalk, roadway, right of way, or body of water.
2. Terraces, walks, driveways, sidewalks, and similar structures, provided that any such structure is substantially at grade (street) level.
3. Walls and fences.
4. Storm doors and windows, screens, window air conditioners, lighting fixtures, antenna and similar appurtenances.
5. The color of paint.
6. The color of materials used on roofs.
7. All signs and banners.
8. Temporary structures or signs, and similar matters as the Commission may reasonably specify.

II. ADMINISTRATION OF THE DISTRICT

Obligations of Owners and Tenants

If a property owner or tenant wishes to modify a building, structure, or site located within the District, he or she must apply to the New Bedford Historical Commission for review before undertaking the work. Approval may consist of a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship.

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Meetings of the Commission

The New Bedford Historical Commission meets the first Wednesday of every month and the meetings are open to the public. Meetings that require the review of applications for Certificates of Appropriateness are Public Hearings, and are advertised and posted as such. Applicants or their representatives are encouraged to be present at the meeting at which their application is being heard. All meeting agendas are posted with the City Clerk's Office in City Hall two days prior to all meeting. Special meetings, which may also be Public Hearings, are called as needed.

Commission meetings may be cancelled due to lack of a voting quorum. Applications under consideration at such meetings will be given highest priority at the next Commission meeting.

The Application Process

The process of applying to the New Bedford Historical Commission for work within the District is a simple one. The first step is to consult with the staff of the Commission in order to find out which certificate is necessary. The staff is also available to provide technical and design assistance for projects in the District. The Commission is staffed by National Park Service personnel located at 33 William Street, New Bedford, MA 02740, and may be contacted at 508.996.4095 ext.11.

In order to allow required legal notice in the New Bedford Standard-Times, completed applications, application materials and fees must be submitted to the secretary of the Historical Commission 28 days before the Historical Commission meeting. The owner of the property or his/her representative must sign applications.

TIME FRAMES FOR APPLICATIONS

n 28 days prior to the date of the NBHC public hearing the completed application and all required attachments are submitted to the secretary.

n 14 days prior to the public hearing the secretary reviews jurisdiction and the public notice is mailed and the advertisement for the hearing is placed in the Standard Times.

n On the date of the public hearing the application is heard by the NBHC.

n Five business days after the public hearing approved applicants are awarded the appropriate certificates.



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Application Materials for Commission Meetings

Additions, alterations and new construction

- ⁿ Photographs clearly showing the structures to be affected.
- ⁿ Samples of materials to be used such as:
 - paint chips and color swatches
 - brick and mortar samples
- ⁿ Scaled architectural drawings (1/8" = 1' minimum) and specifications showing design and methods of construction of proposed work. Drawings are to be submitted on a paper size no larger than 11" x 17".
- ⁿ Historical photographs (if available) to aid in sympathetic design.

Signs

- ⁿ Scaled drawings for proposed signs; 1/2" = 1' minimum.
- ⁿ Photographs or elevations of building showing exact locations of proposed signs, scaled at 1/8" = 1', or photograph.
- ⁿ Samples or specifications for materials, colors, etc. to be used.
- ⁿ Sections through sign showing details such as moldings, posts, and edge conditions.
- ⁿ Details and specifications for proposed brackets/hangers, colors, installation methods, light fixtures, etc.

After Completion of the Work

After completion of the approved work, an official from the New Bedford Historical Commission will visit the work site to verify compliance with Commission-approved plans.

Enforcement

Failure to apply for proper Commission approval for work in the Waterfront Historic District constitutes a violation of Chapter 40C of Massachusetts Law and will be punished to the extent of the law, which specifies fines of up to \$500 per day for unapproved work.

Applicants who receive Historical Commission approval must follow plans as approved. Failure to follow approved plans may also delay or prevent the issuance of Building Permits or Certificates of Occupancy.



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III. THE CERTIFICATES

Certificate of Appropriateness

This certificate is issued for the following:

1. Any and all changes affecting the exterior portion of the building, site, or structure visible from a public way.
2. Proposed new construction or additions visible from a public way.

The process for this certificate is as follows:

1. An application may be obtained and filed during any working day with the New Bedford Historical Commission. There is a non-refundable application fee of \$25.00 that is collected by the City Planning Office. Checks should be made payable to the City of New Bedford.
2. Within fourteen (14) days after the filing of an application for a Certificate of Appropriateness, the Commission must decide if it has jurisdiction. If so, the Commission must hold a public hearing on the application with a fourteen (14) day notice.



This replacement window is of the same material as the original wood window. The sash and pane configuration and other design details match the original window. This window does have removable storm panels on the exterior for improved energy efficiency. Replacement should only be considered when an existing window is too deteriorated to repair.



Signs should not detract from the building facade and may reflect the nature of the business that is being advertised. Scale, material, color and location on the building facade should be considered.

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Certificate of Non-Applicability

This certificate is issued for the following:

1. Proposed construction or alteration of exterior architectural features not subject to public view;
2. Ordinary maintenance, repair, or replacement of any exterior architectural feature which does not involve a change in design, material, color, or the outward appearance thereof;
3. Landscaping with plants, trees, shrubs or flower boxes;
4. The meeting of requirements certified by a duly authorized public officer to be necessary for public safety; and
5. Construction or alterations conforming to such guidelines as may be established by the New Bedford Historical Commission from time to time.

The process for this certificate follows:

1. An application may be filed during any working day with the New Bedford Historical Commission. There is no application fee for this certificate.
2. The Chairman of the Commission shall poll Commission members to obtain their judgment. If a majority of the membership concurs, a Certificate of Non-Applicability will be issued.
3. In cases of non-concurrence, the Chairman shall notify the applicant within one week of the time of the filing and the applicant shall be brought before the next regular meeting of the Commission.



Scheduled maintenance of historic structures is key to their preservation. Proper materials and preservation techniques should be used for any required patching or piecing-in prior to painting.



The simple design of this flower box is appropriate for this federal style building and does not alter or damage the window or brownstone sill.

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Certificate of Hardship

This certificate is issued for the following:

1. Owing to conditions especially affecting the building or structure involved but not affecting the Historic District generally, when failure to approve a regular application will involve a substantial hardship, financial or otherwise, to the applicant and when approval will not cause substantial detriment to the public welfare nor cause substantial derogation from the intent and purposes of Chapter 40C; or
2. When the Commission fails to make a determination on an application within sixty (60) days after the filing of such application.

The process for this certificate is as follows:

1. An application may be filed during any working day with the New Bedford Historical Commission. There is no application fee for this certificate.
2. Within fourteen (14) days after the filing of an application for a Certificate of Hardship, the Commission must decide if it has jurisdiction. If so, the Commission must hold a public hearing on the application with a fourteen (14) day notice.



A Certificate of Hardship can be issued for work that is required to comply with building codes. The metal railings above provide safe access without compromising the character of the granite steps and entry to the building.

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IV. STANDARDS FOR COMMISSION DECISIONS

This chapter contains the architectural design standards, state and local laws and other regulations that the NBHC must follow to make determinations on a wide variety of design issues in the District. Owners and applicants can contact the commission secretary at 33 William Street for additional reference material including National Park Service publications and briefing documents.

An outline of the Secretary of the Interior's Standards follows in this chapter of the guidebook. The complete Standards are available for reference by contacting the NBHC staff at 33 William Street.



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THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

Rooted in over 120 years of preservation ethics in both Europe and America, The Secretary of the Interior's Standards for the Treatment of Historic Properties are common sense principles in non-technical language. They were developed to help protect our nation's irreplaceable cultural resources by promoting consistent preservation practices. The Standards serve as a well-established guide for the New Bedford Historical Commission to base its decisions on the treatment of all of the properties within the District.

It should be understood that the Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations; as such, they cannot, in and of themselves, be used to make essential decisions about which features of a historic property should be saved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

Four Treatment Approaches

There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties—preservation, rehabilitation, restoration, and reconstruction.

Preservation focuses on the maintenance and repair of existing historic materials and retention of a property's form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.)

Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

Restoration depicts a property at a particular period of time in its history, while removing evidence of other periods.

Reconstruction re-creates vanished or non-surviving portions of a property for interpretive purposes.

Choosing an Appropriate Treatment

Choosing an appropriate treatment for a historic building or landscape, whether preservation, rehabilitation, restoration, or reconstruction is critical. This choice always depends on a variety of factors, including its historical significance, physical condition, proposed use, and intended interpretation.

The questions that follow pertain specifically to **historic buildings**, but the process of decision-making would be similar for other property types:

Relative importance in history. Is the building a nationally significant resource—a rare survivor or the work of a master architect or craftsman? Did an important event take place in it? National Historic Landmarks, designated for their “exceptional significance in American history,” or many buildings individually listed in the National Register often warrant *Preservation* or *Restoration*. Buildings that contribute to the significance of a historic district but are not individually listed in the National Register more frequently undergo *Rehabilitation* for a compatible new use.

Physical condition. What is the existing condition—or degree of material integrity—of the building prior to work? Has the original form survived largely intact or has it been altered over time? Are the alterations an important part of the building's history? *Preservation* may be appropriate if distinctive materials, features, and spaces are essentially intact and convey the building's historical significance. If the building requires more extensive repair and replacement, or if alterations or additions are necessary for a new use, then *Rehabilitation* is probably the most appropriate treatment. These key

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questions play major roles in determining what treatment is selected.

Proposed use. An essential, practical question to ask is: Will the building be used as it was historically or will it be given a new use? Many historic buildings can be adapted for new uses without seriously damaging their historic character; special-use properties such as grain silos, forts, ice houses, or windmills may be extremely difficult to adapt to new uses without major intervention and a resulting loss of historic character and even integrity.

Mandated code requirements. Regardless of the treatment, code requirements will need to be taken into consideration. But if hastily or poorly designed, code-required work may jeopardize a building's materials as well as its historic character. Thus, if a building needs to be seismically upgraded, modifications to the historic appearance should be minimal. Abatement of lead paint and asbestos within historic buildings requires particular care if important historic finishes are not to be adversely affected. Finally, alterations and new construction needed to meet accessibility requirements under the Americans with Disabilities Act of 1990 should be designed to minimize material loss and visual change to a historic building.

Standards for Preservation

PRESERVATION IS DEFINED *as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.*

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

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8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

PRESERVATION AS A TREATMENT. When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment.

Standards for Rehabilitation

REHABILITATION IS DEFINED AS *the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features, which convey its historical, cultural, or architectural values.*

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

REHABILITATION AS A TREATMENT. When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment.

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Standards for Restoration

RESTORATION IS DEFINED AS *the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.*

1. A property will be used as it was historically or be given a new use that reflects the property's restoration period.
2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.
3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.
4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.
6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

RESTORATION AS A TREATMENT. When the property's design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.

Standards for Reconstruction

RECONSTRUCTION IS DEFINED AS *the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.*

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1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

RECONSTRUCTION AS A TREATMENT. When a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site); when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction, Reconstruction may be considered as a treatment.

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GENERAL LAWS OF MASSACHUSETTS (M.G.L.) CHAPTER 40C. HISTORIC DISTRICTS.

Section 1. Citation.

This chapter shall be known and may be cited as the Historic Districts Act.

Section 2. Purpose.

The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

Section 3. Establishment of historic districts; pre-requisites; enlargement or reduction of boundaries; amendment of creating ordinance; filing of maps.

A city or town may, by ordinance or by-law adopted by two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, establish historic districts subject to the following provisions: — Prior to the establishment of any historic district in a city or town an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section and in section four, who shall transmit copies of the report to the planning board, if any, of the city or town, and to the Massachusetts historical commission for their respective consideration and recommendations. The buildings, structures or sites to be included in the proposed historic district may consist of one or

more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. The Massachusetts historical commission may consult with the executive director of the Massachusetts office of business development, the secretary of communities and development and the commissioner of environmental management with respect to such reports, and may make guidelines for such reports, and, after public hearing, establish rules as to their form and manner of transmission. Not less than sixty days after such transmittal the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of a proposed ordinance or by-law, to the city council or town meeting.

An historic district may be enlarged or reduced or an additional historic district in a city or town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or reduction of an existing historic district the investigation, report and hearing shall be by the historic district commission having jurisdiction over such historic district instead of by a study committee; (b) in the case of creation of an additional historic district the investigation, report and hearing shall be by the historic district commission of the city or town, or by the historic district commissions acting jointly if there be more than one, instead of by a study committee unless the commission or commissions recommend otherwise; and (c) if the district is to be reduced written notice as above provided of the commission's hearing on the proposal shall be given to said owners of each property in the district.

Any ordinance or by-law creating an historic district

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may, from time to time, be amended in any manner not inconsistent with the provisions of this chapter by a two-thirds vote of the city council in a city or by a two-thirds vote of a town meeting in a town, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty days have elapsed without such recommendation.

No ordinance or by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the city clerk or town clerk and has been recorded in the registry of deeds for the county or district in which the city or town is located, and the provisions of section thirteen A of chapter thirty-six shall not apply.

Section 4. Study committees; commissions; establishment; membership; terms; vacancies; compensation; officers.

An historic district study committee may be established in any city or town by vote of the city council or board of selectmen for the purpose of making an investigation of the desirability of establishing an historic district or districts therein. The study committee shall consist of not less than three nor more than seven members appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen, including one member from two nominees submitted by the local historical society or, in the absence thereof, by the Society for the Preservation of New England Antiquities, one member from two nominees submitted by the chapter of the American Institute of Architects covering the area, and one member from two nominees of the board of realtors, if any, covering the area. If within thirty days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made the appointing

body may proceed to appoint the study committee without nominations by such organization.

Whenever an historic district is established as provided in section three an historic district commission shall be established which shall consist of not less than three nor more than seven members. An historic district commission shall be appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen, in the same manner as an historic district study committee unless (a) the report recommending its establishment recommends alternate or additional organizations to submit nominees for membership and states reasons why such alternate or additional organizations would be appropriate or more appropriate for the particular city or town, the Massachusetts historical commission does not recommend otherwise prior to the public hearing on the establishment of the district, and the ordinance or by-law so provides; or (b) there is an existing historic district commission in the city or town which the report recommends should administer the new district, and the ordinance or by-law so provides. Unless the report recommends otherwise on account of the small number of residents or individual property owners, and the ordinance or by-law so provides, the members of the historic district commission shall include one or more residents of or owners of property in an historic district to be administered by the commission. If within thirty days after submission of a written request for nominees to an organization entitled to submit nominations for membership on the commission no such nominations have been made the appointing body may proceed to make the appointment to the commission without nomination by such organization. The appointments to membership in the commission shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in the same manner as the original appointment for terms of three years. Vacancies shall be filled in the same manner as the original appointment for the unexpired term. Ordinances or by-laws adopted

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hereunder may provide for the appointment of alternate members not exceeding in number the principal members who need not be from nominees of organizations entitled to nominate members. In case of the absence, inability to act or unwillingness to act because of self-interest on the part of a member of the commission, his place shall be taken by an alternate member designated by the chairman. Each member and alternate shall continue in office after the expiration of his term until his successor is duly appointed and qualified. All members shall serve without compensation. The commission shall elect annually a chairman and vice-chairman from its own number and a secretary from within or without its number.

Section 5. Definitions.

As used in this chapter the word "altered" includes the words "rebuilt", "reconstructed", "restored", "removed" and "demolished" and the phrase "changed in exterior color"; the word "building" means a combination of materials forming a shelter for persons, animals or property; the word "commission" means the commission acting as the historic district commission; the word "constructed" includes the words "built", "erected", "installed", "enlarged", and "moved"; the words "exterior architectural feature" mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures; the words "person aggrieved" mean the applicant, an owner of adjoining property, an owner of property within the same historic district as property within one hundred feet of said property lines and any charitable corporation in which one of its purposes is the preservation of historic structures or districts; and the word "structure" means a combination of

materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

Section 6. Certificates of appropriateness, non-applicability or hardship; necessity; applications and plans, etc.; building and demolition permits restricted.

Except as the ordinance or by-law may otherwise provide in accordance with section eight or said section eight or nine, no building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

Section 7. Factors to be considered by commission.

In passing upon matters before it the commission shall consider, among other things, the historic and

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architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law. When ruling on applications for certificates of appropriateness for solar energy systems, as defined in section one A of chapter forty A, the commission shall also consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access. The commission shall not consider interior arrangements or architectural features not subject to public view.

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

Section 8. Review authority of commission over certain categories of buildings, structures or exterior architectural features limited; authorization.

(a) Any city or town may provide in the ordinance or by-law establishing a district or in any amendment thereof that the authority of the commission shall not extend to the review of one or more of the following categories of buildings or structures or exterior architectural features in the historic district, and, in this event, the buildings or structures or exterior architectural features so excluded may be constructed or altered within the historic district without review by the commission:

(1) Temporary structures or signs, subject, however, to such conditions as to duration of use, location, lighting, removal and similar matters as the commission may reasonably specify.

(2) Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level.

(3) Walls and fences, or either of them.

(4) Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae and similar appurtenances, or any one or more of them.

(5) The color of paint.

(6) The color of materials used on roofs.

(7) Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than twelve square feet in area, consist of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them.

(8) The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(b) A commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, including, without limitation, any of those enumerated under paragraph (a), if the provisions of the ordinance or by-law do not limit the authority

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of the commission with respect thereto, may be constructed or altered without review by the commission without causing substantial derogation from the intent and purposes of this chapter.

(c) A city or town may provide in its ordinance or by-law, or in any amendment thereof, that the authority of the commission shall be limited to exterior architectural features within a district which are subject to view from one or more designated public streets, public ways, public parks or public bodies of water, although other portions of buildings or structures within the district may be otherwise subject to public view, and, in the absence of such provision of the ordinance or by-law, a commission may determine from time to time after public hearing that the authority of the commission may be so limited without substantial derogation from the intent and purposes of this chapter.

(d) Upon request the commission shall issue a certificate of non-applicability with respect to construction or alteration in any category then not subject to review by the commission in accordance with the provisions of paragraph (a), (b) or (c).

Section 9. Maintenance and repair, etc.

Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the applicable historic district ordinance or by-law.

Section 10. Additional powers, functions and duties of commission.

The commission shall have the following additional powers, functions and duties: — (a) If the commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the historic district, the commission shall cause a certificate of appropriateness to be issued to the applicant. In the case of a disapproval of an application for a certificate of appropriateness the commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefore as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any disapproval the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal that, if made, would make the application acceptable to the commission. If within fourteen days of the receipt of such a notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appropriateness to be issued to the applicant.

(b) In the case of a determination by the commission that an application for a certificate of appropriateness or for a certificate of non-applicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not then subject to review by the commission in accordance with the provisions of section eight, the commission shall cause a certificate of non-applicability to be issued to the applicant.

(c) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate,

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or in the event of an application for a certificate of hardship, the commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this chapter. If the commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or in the event of failure to make a determination on an application within the time specified in section eleven, the commission shall cause a certificate of hardship to be issued to the applicant.

(d) Each certificate issued by the commission shall be dated and signed by its chairman, vice-chairman, secretary or such other person designated by the commission to sign such certificates on its behalf.

(e) The commission shall keep a permanent record of its resolutions, transactions, and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The commission shall file a copy of any such rules and regulations with the city or town clerk.

(f) The commission shall file with the city or town clerk and with any department of the city or town having authority to issue building permits a copy or notice of all certificates and determinations of disapproval issued by it.

(g) A commission may after public hearing set forth in such manner as it may determine the various

designs of certain appurtenances, such as light fixtures, which will meet the requirements of an historic district and a roster of certain colors of paint and roofing materials which will meet the requirements of an historic district, but no such determination shall limit the right of an applicant to present other designs or colors to the commission for its approval.

(h) The commission may, subject to appropriation, employ clerical and technical assistants or consultants and incur other expenses appropriate to the carrying on of its work, and may accept money gifts and expend the same for such purposes. The commission may administer on behalf of the city or town any properties or easements, restrictions or other interests in real property which the city or town may have or may accept as gifts or otherwise and which the city or town may designate the commission as the administrator thereof.

(i) The commission shall have, in addition to the powers, authority and duties granted to it by this act, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of the city council or town meeting.

Section 11. Approval or disapproval of exterior architectural features by commission; meetings; applications for certificates; public hearings; notices.

Meetings of a commission shall be held at the call of the chairman and shall be called at the request of two members of the commission and in such other manner as the commission shall determine in its rules. A majority of the members of a commission shall constitute a quorum. The concurring vote of a majority of the members of the commission shall be necessary to issue a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship.

A commission shall determine promptly, and in all events within fourteen days after the filing of an

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application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features that are subject to approval by the commission. If a commission determines that such application involves any such features which are subject to approval by the commission the commission shall hold a public hearing on such application unless such hearing is dispensed with as hereinafter provided.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least fourteen days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, to the planning board of the city or town, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or such lesser period as the ordinance or by-law may provide, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time the commission shall thereupon issue a certificate of hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature involved or its category or color, as the case may be, is so insubstantial in its

effect on the historic district that it may be reviewed by the commission without public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

Section 12. Review procedure provided by local ordinance or by-law.

A city or town may provide in its ordinance or by-law or in any amendment thereof, for a review procedure whereby any person aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city or town clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the city or town is a member. If the city or town is not a member of a regional planning agency, the department of community affairs shall select the appropriate regional planning agency.

The finding of the person or persons making such review shall be filed with the city or town clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided in section twelve A.

Section 12A. Appeal to superior court.

Any person aggrieved by a determination of the commission, or by the finding of a person or persons making a review, if the provisions of section twelve are included in a local ordinance or by-law, may, within twenty days after the filing of the notice of such determination or such finding with the city or town clerk, appeal to the superior court sitting in equity for the county in which the city or town is

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situated. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence or to exceed the authority of the commission, or may remand the case for further action by the commission or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that such party acted in bad faith or with malice in making the appeal to the court.

Section 13. Jurisdiction of superior court; penalty.

The superior court sitting in equity for the county in which the city or town is situated shall have jurisdiction to enforce the provisions of this chapter and any ordinance or by-law enacted hereunder and the determinations, rulings and regulations issued pursuant thereto and may, upon the petition of the mayor or of the board of selectmen or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this chapter shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

Section 14. Powers and duties of commissions established hereunder as historical commissions.

If the city council or town meeting so votes a commission established hereunder shall have the powers and duties of an historical commission as provided in section eight D of chapter forty and, in this event, a commission may be entitled an historical commission.

Section 15. Filing of ordinances, maps, reports, etc.

All ordinance or by-laws creating an historic district adopted by a city or town under authority of this chapter and under authority of any special law, unless the special law shall otherwise provide, amendments thereto, maps of historic districts created thereunder, and annual reports and other publications of commissions, and rosters of membership therein, shall be filed with the Massachusetts historical commission.

Section 16. Special historic districts; acceptance and effect of this chapter.

A city or town in which there is located an historic district established under a special law may, upon recommendation of the historic district commission having jurisdiction over such district, accept the provisions of this chapter with respect to such district by a two-thirds vote of the city council in a city or by two-thirds vote of a town meeting in a town, and thereafter such historic district shall be subject to the provisions of this chapter notwithstanding the terms of any special act pursuant to which such historic district was created. The provisions of this chapter shall not impair the validity of an historic district established under any special act.

Section 17. Severability.

The provisions of this chapter shall be deemed to be severable if any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction the remaining provisions shall continue in full force and effect.

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ARTICLE XI. NEW BEDFORD HISTORICAL COMMISSION; HISTORIC DISTRICTS*

Sec. 2-150. Establishment; membership.

There is hereby established under the historic districts act, Massachusetts General Laws, Chapter 40C, with all the powers and duties of an historic district commission, a New Bedford Historical Commission, consisting of seven (7) members to be appointed by the mayor with the approval of the city council, including one member or representative where possible of the city planning department, one member or representative where possible of the National Park Service, two (2) members where possible from nominees submitted by the New Bedford Port Society, the Old Dartmouth Historical Society, the Waterfront Historic Area League, the New Bedford Historical Society and any other recognized local historic societies, one architect where possible from two (2) candidates, one of whom shall be nominated by the chapter of the American Institute of Architects covering New Bedford, and one of whom shall be nominated by the society of landscape architects covering the city, one member where possible from two (2) nominees of the Greater New Bedford Board of Realtors, and one land owner or tenant where possible in the historic districts who should have no connection with any of the above categories. Seven (7) alternate members shall also be appointed by the mayor in like manner. When the commission is first established, two (2) members and alternate members shall be appointed for a term of one year, two (2) shall be appointed for a term of two (2) years, and three (3) shall be appointed for a term of three (3) years, and their successors shall be appointed in like manner for terms of three (3) years. Vacancies shall be filled in like manner for the unexpired term. In the case of any member being unable to attend commission meetings for any reason, that member shall propose an alternate member for designation by the chairperson. If the alternate member is not

proposed at least two (2) days in advance of a scheduled meeting, then the chairperson may choose an alternate. (Code 1963, § 3-3101; Ord of 6-10-71; Ord of 2-8-01))

State law reference—Authority to establish, etc., M.G.L.A. C 40, § 8D. Said section was accepted by the city.

Sec. 2-151. Adoption of rules and regulations.

The commission shall adopt rules and regulations for the conduct of its business, not inconsistent with the provisions of the historic districts act or this article. (Code 1963, § 3-3107; Ord. of 6-10-71)

Sec. 2-152. Powers and duties.

The commission shall have, in addition to the powers and duties of a historical district commission as delineated in Chapter 40, section 8D of the Massachusetts General Laws, and the following further powers and duties, subject to appropriations or receipt of money gifts, and may in the exercise of any of its powers or duties accept and expend such gifts and employ clerical

***Cross reference**—Committee on historical objects and tourism, § 2-68.
and technical assistants, or consultants:

(1) To conduct a survey of buildings in the city and sites for the purpose of determining those of historic significance architecturally or otherwise. Copies of this continuing survey shall be placed in the hands of the city planning department, the redevelopment authority, the building department, and the public library and periodically updated by the commission;

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(2) To propose from time to time as it deems appropriate the establishment, in accordance with the provisions of the historic districts act, of additional historic districts and changes in historic districts;

(3) To determine an appropriate system of markers for selected historic sites and buildings not already sufficiently marked, to arrange for preparation and installation of such markers, and to arrange for care of historic markers;

(4) To arrange for preparation and publication of maps and brochures and descriptive material about the city historic sites and buildings;

(5) To cooperate with and advise the planning department, the redevelopment authority, the public works department, and other city agencies in matters involving historic sites and buildings;

(6) To cooperate with and enlist assistance for the city from the National Park Service, the National Trust for Historic Preservation, the Society for the Preservation of New England Antiquities, and other agencies, public and private, from time to time concerned with historic sites and buildings;

(7) To advise owners of historic buildings in the city on problems of preservation. (Code 1963, § 3-3103; Ord. of 6-10-71; Ord. of 5-28-81, § 1)

Sec. 2-153. Recommending committees

The commission may recommend to the mayor from time to time, as needed the appointment of advisory committees of historians and person experienced in architecture or other arts or in historic preservation or restoration, to assist in a manner comparable to the National Park Service Advisory Board or Consulting Committee. (Code 1963, § 3-3104; Ord of 6-10-71)

Sec. 2-154. Publication of guidelines.

The commission may formulate and publish guidelines for construction or alteration of buildings or structures or appurtenant fixtures in the areas as defined in section 5 of Chapter 40C of the Massachusetts General Laws. (Code 1963, § 3-3105; Ord of 6-10-71)

Sec. 2-155. Certificate of appropriateness; time for decision.

When taking action under the provisions of the second paragraph of section 7 of the historic districts act, the commission shall make its determination within forty-five (45) days after the filing of the application for a certificate of appropriateness, or such further time as the applicant may in writing allow. (Code 1963, § 3-3106; Ord of 6-10-71)

State law reference—See M.G.L.A. c. 40C, § 11.

Sec. 2-156. Bedford Landing Historic District established.

There is hereby established under provisions of the historic districts act, one historic district to be known as Bedford Landing, bounded and described as shown on the map entitled, “Bedford Landing — Waterfront Historic District,” as amended, attached to and made part of the ordinance from which this section is derived. (Code 1963, § 3-3102; Ord of 6-10-71; Ord of 9-13-79; Ord of 2-8-01)

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NEW BEDFORD HISTORICAL COMMISSION BY-LAWS

Adopted by the Commission July 7, 1976

Article I. Name

The Commission's name shall be the New Bedford Historical Commission.

Article II. Purpose

To promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of architecture of New Bedford and through the maintenance and improvement of settings for such buildings and places, and the encouragement of design compatible therewith.

Article III. Powers and Duties

The New Bedford Historical Commission shall have the following powers and duties, subject to appropriation or receipt of money, gifts, and may in exercise of any of its powers or duties accept and expand such gifts and employ clerical and technical assistants, or consultants:

1. to issue Certificates of Appropriateness, Certificates of Non-Applicability, and Certificates of Hardship without which no building or structure within the Bedford Landing — Waterfront Historic District shall be constructed or altered in any way that affects exterior architectural features; according to Massachusetts General Laws, Chapter 40C, Section 6;
2. to administer on behalf of the City of New Bedford any properties or easements, restrictions or other interests on real property which the City

may have or may accept, or gifts or otherwise and which the City of New Bedford may designate the Commission as the administrator thereof;

3. to conduct a survey of New Bedford buildings and sites for the purpose of determining those of historic significance architecturally or otherwise. Copies of this continuing survey shall be placed in the hands of the City Planning Department, the Redevelopment Authority, the Building Department, and the Public Library and periodically updated by the Commission;

4. to propose from time to time as the Commission deems appropriate the establishment, in accordance with the provisions of the Historic District Act, Chapter 40C, Section 3, of additional historic districts and changes in historic districts;

5. to determine an appropriate system of markers for selected historic sites and buildings not already sufficiently marked, to arrange for preparation and installation of such markers, and to arrange for maintenance of historic markers;

6. to arrange for preparation and publication of maps and brochures and descriptive material about New Bedford historic sites and buildings;

7. to cooperate with and advise the Planning Department, the Redevelopment Authority, the Public Works Department, and other City agencies in matters involving historic sites and buildings;

8. to cooperate with and enlist assistance for New Bedford from the National Park Service, the National Trust for Historic Preservation, the Society for the Preservation of New England Antiquities, and other agencies, public and private, from time to time concerned with historic sites and buildings;

9. to advise owners of historic buildings in the city on problems of preservation;

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10. to recommend to the Mayor from time to time, as needed the appointment of advisory committees of historians and persons experienced in architecture or other arts or in historic preservation or restoration;

11. to formulate and publish guidelines for construction or alterations of buildings or structures or appurtenant fixtures in the New Bedford Landing — Waterfront Historic District;

12. such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of New Bedford City Council.

Article IV. Membership

Composition

The New Bedford Historical Commission shall consist of seven (7) members and seven (7) alternates appointed by the Mayor and confirmed by the City Council.

Commission membership shall include where possible (a) one representative and alternate from the New Bedford Planning Department; (b) one (1) representative and alternate from the National Park Service; (c) two (2) members and two (2) alternates from nominees of recognized local historical societies including the New Bedford Port Society, the Old Dartmouth Historical Society and the Waterfront Historic Area League; (d) one (1) architect and alternate from two (2) candidates, one (1) nominated by the American Institute of Architects covering New Bedford and one (1) nominated by the Society of Landscape Architects covering New Bedford; (e) one (1) member and alternate from two (2) nominees of the Greater New Bedford Board of Realtors; (f) one (1) member and alternate from among the land owners and tenants of the Bedford Landing — Waterfront Historic District.

Terms

Membership terms will be three (3) years. Each member and alternate shall continue in office after the expiration of the term until his successor is duly appointed and qualified.

Vacancies

Vacancies shall be filled by Mayoral appointment and City Council confirmation for the length of the unexpired terms.

Voting Rights

Voting rights are reserved to the seven (7) primary members of the New Bedford Historical Commission or, in their absence, the alternate selected in the manner prescribed in Article VII. The voting membership shall elect annually a Chairman, Vice-Chairman, and other officers necessary to carry out the duties and responsibilities of the Commission.

Resignation

Any member or alternate may at any time resign by delivering notice thereof in writing to the Secretary of the Commission. Such resignation shall be effective upon receipt unless a later time is specified therein, and acceptance thereof shall not be necessary to make it effective unless the resignation so states.

Article V. Officers

The Chairman

The Chairman shall call and preside at all meetings of the Commission and appoint members to all committees and perform all duties incident to his office. He may sign, with any other proper officers of the Commission any deeds, mortgages, bonds,

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contracts or other instruments which the New Bedford Historical Commission authorized for execution except in cases prohibited by law.

Vice-Chairman

Duties of the Vice-Chairman shall be the same as those of the Chairman in the absence of the Chairman.

The Secretary

The Secretary, who need not be a member of the Commission, shall keep the records, shall file necessary reports, shall send and keep written correspondence of the Commission, give all notices required by the by-laws or by-law and shall perform such other duties as are assigned by the Chairman or by the Commission.

Compensation

No member or alternate of the New Bedford Historical Commission shall be compensated by the Commission for services provided; the Commission may provide reimbursement for expenses and disbursements made on behalf of the Commission.

Article VI. Committees

The New Bedford Historical Commission shall establish such committees as necessary to carry out the Commission's duties and responsibilities. One member of each committee shall be appointed committee chairman by the Chairman of the Commission. Members of all committees shall abide by all the rules and regulations established by the New Bedford Historical Commission for its own meetings or such other rules as may be prescribed by the Chairman.

Article VII. Meetings

The New Bedford Historical Commission shall hold regular meetings on the first Wednesday of each month. Special meetings of the Commission shall be held as necessary.

How Called

Meetings of the Commission shall be held at the call of the Chairman or shall be called at the written request of two members of the Commission.

Quorums and Votes

A majority of the members of the Commission shall constitute a quorum. Decisions shall be made by a concurring majority of members present.

Alternate

In the case of any member being unable to attend Commission meetings for any reason, that member shall propose an alternate member for designation by the Chairman. If the alternate member is not proposed at least two (2) days in advance of a scheduled meeting, then the Chairman may choose an alternate to substitute for said meeting.

Open Meeting and Public Hearings

All meetings of the New Bedford Historical Commission shall be open to the public. Notice of such meetings will be posted in the office of the New Bedford City Clerk at least two (2) working days prior to such meetings.

The New Bedford Historical Commission shall hold a public hearing when deciding on Certificates of Appropriateness, Certificates of Non-Applicability, or Certificates of Hardship as prescribed in Article VIII, or other such purpose, as the Commission deems necessary. The Commission shall give notice of such public hearings by (a) posting notification

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of such hearing in the Office of the New Bedford City Clerk at least fourteen (14) days prior to such hearing; (b) by advertising in the New Bedford Standard Times at least fourteen (14) days before the hearing; (c) by mailing at least fourteen (14) days before the hearing, postage prepaid, a copy of such notification to (1) applicant, (2) to the owners of all adjoining property materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, (3) to the New Bedford Planning Board, (4) to any person filing written request for notice of hearings, such request to be renewed yearly in December, and (5) to such persons as the Commission shall deem entitled to notice.

Executive Session

The New Bedford Historical Commission reserves the right to enter into executive session in accordance with the Open Meeting Law, excerpt from Chapter 303, Acts of 1975, as may be amended from time to time.

Agenda

Items other than an application for Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship must be submitted to the Secretary at least five (5) working days before the Commission meeting in order to be placed on the agenda for said meeting.

Notification for public hearings shall include that portion of the agenda that deals with application for a Certificate of Appropriateness, a Certificate of Non-Applicability, or a Certificate of Hardship.

Article VIII. Certificates

No building or structure within the “Bedford Landing — Waterfront Historic District” shall be constructed or altered in any way that affects exterior architectural features unless the Commission shall

first have issued a Certificate of Non-Applicability, or a Certificate of Hardship, or a Certificate of Appropriateness with respect to such construction or alteration.

Certificate of Non-Applicability

A Certificate of Non-Applicability shall be issued (a) for proposed construction or alteration of interior arrangements or exterior architectural features not subject to public view; (b) for the ordinary maintenance, repair or replacement of any exterior architectural feature which does not involve a change in design, material, color, or the outward appearance thereof; (c) for landscaping with plants, trees, or shrubs; (d) for the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition; and (e) for construction or alterations conforming to such guidelines as may be established by the New Bedford Historical Commission from time to time.

For all of the items listed above, the Commission hereby establishes the following procedures with regard to a Certificate of Non-Applicability. Application for said certificates may be filed during any working day with the Secretary of the Commission. Within one working day of the filing of said application, the Secretary of the Commission shall poll the members of the Commission to obtain their judgment concerning the application. If a majority of the members of the Commission concur with the application, a Certificate of Non-Applicability shall be issued. In cases when there is doubt by a majority of the members of the Commission as to whether a Certificate of Non-Applicability or a Certificate of Appropriateness shall govern, or in cases when a majority of the members of the Commission do not concur with the application, the Secretary shall so notify the applicant within one (1) week of the time of the filing of the application and the application shall be brought before the next regular meeting of the Historical Commission.

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Certificate of Hardship

A Certificate of Hardship shall be issued when (a) owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and when approval will not cause substantial detriment to the public welfare nor cause substantial derogation from the intent and purposes of this chapter; and (b) when the Commission fails to make a determination on an application within sixty (60) days after the filing of such application.

Certificate of Appropriateness

A Certificate of Appropriateness shall be issued when the Commission determines that the construction or alteration for which a Certificate of Appropriateness has been filed will be appropriate or compatible with the preservation or protection of the historic district.

Disapproval of an Application

In the case of a disapproval of an application the Commission shall record the reasons for such determination and shall notify the applicant of its determination and the reasons therefore.

Recommendations

The Commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material, and similar features. Prior to the issuance of any disapproval the Commission may notify the applicant of its proposed action accompanied by recommendations of change in the applicant's proposal, which would make the application acceptable.

Modification and Application

If within fourteen (14) days of the receipt of such notice the applicant filed a written modification of his application in conformity with the commended changes, the Commission shall issue a Certificate of Appropriateness.

Determination of Applications

The Commission shall determine within fourteen (14) days after the filing of an application for a Certificate of Appropriateness, Non-Applicability, or Hardship whether the application involves exterior architectural features that are subject to approval by the Commission.

If affirmative, the commission shall hold a public hearing on the application unless such hearing is dispensed with as provided in the following section entitled "Waiver of Public Hearing."

The Commission shall fix a reasonable time for the hearing on an application and shall give public notice of the time, place and purpose thereof at least fourteen (14) days before said hearing as prescribed in Article VII, section entitled "Open Meetings and Public Hearing."

Each applicant whose application shall require a public hearing with advertisement in the Standard Times shall be required to submit to the Commission a fee of twenty-five (\$25.00) dollars per application to defray the cost of advertising.

Waiver of Public Hearing

A public hearing need not be held if (a) such hearing is waived in writing by all persons entitled to notice thereof as prescribed in Article VII or (b) the Commission determines that the exterior architectural feature involved, or its color or category, is insubstantial in its effect on the Historic District.

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If the Commission waives the public hearing, notice of the application must be sent to the owners of adjoining property and other property deemed by the Commission to be materially affected; and ten (10) days shall elapse after the mailing of such notice before the Commission may act on such application.

Validation of Certificates

Each certificate issued by the New Bedford Historical Commission shall be dated and signed by its Chairman or other such person designated by the Commission to sign such certificates on its behalf.

The Commission shall file with the New Bedford City Clerk and with the New Bedford Building Department, a copy or notice of all certificates and determinations of disapproval issued by it.

Appeal

Any applicant aggrieved by a determination of the Commission may, within twenty (20) days after the filing of the notice of such determination with the New Bedford City Clerk, appeal to the Superior Court of Bristol County.

Violations and Penalties

The Bristol County Superior Court shall have jurisdiction to enforce the provisions of Chapter 40C of the Massachusetts Legal Code, local ordinances enacted thereunder, and determinations, rulings, and regulations of the New Bedford Historical Commission and may, upon petition of the Mayor of New Bedford, the New Bedford City Council, or the New Bedford Historical Commission, restrain by injunction violations thereof; and, without limitation, the Court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building structures or exterior architectural feature altered or

demolished in violation thereof, and may issue such other orders for relief as may be equitable. Violators shall be punished by a fine of not less than ten (\$10.00) dollars nor more than five hundred (\$500.00) dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

Article IX. Definitions

For the purpose of these by-laws, the following definitions shall apply:

- 1) the word “altered” shall be defined so as to include the words “rebuilt”, “reconstructed”, “restored”, “removed”, and “demolished” and the phrase “changed in exterior color”;
- 2) the word “building” shall be defined to mean a combination of materials forming a shelter for persons, animals, or property;
- 3) the word “commission” shall be defined to mean the commission acting as the historic district commission;
- 4) the word “constructed” shall be defined to include the words “built”, “erected”, “installed”, “enlarged”, and “moved”;
- 5) the words “exterior architectural feature” shall be defined to mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures;
- 6) the word “structure” shall be defined to

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mean a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

Article X. Parliamentary Authority

Meetings of the New Bedford Historical Commission shall be conducted in accordance with the latest editions of *Robert's Rules of Order*.

Article XI.

No article or section of these by-laws shall be interpreted so as to be inconsistent with the provisions of the Historic District Act, Chapter 40C, Massachusetts General Laws, or with the provisions of the City of New Bedford Ordinance Establishing a New Bedford Historical Commission.

Article XII. Severability

The provisions of these by-laws shall be deemed to be severable; if any of its provisions shall be held to be invalid or unconstitutional by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

Amendments to the By-Laws

1. Adopted November 3, 1976 — Article VIII, Determination of Application, shall have the following paragraph added: Each applicant whose application shall require a public hearing with advertisement in the Standard Times shall be required to submit to the Commission a fee of ten (\$10.00) dollars per application to defray the cost of advertising.

2. Adopted March 18, 1977 — Article VIII, Certificate of Non-Applicability, shall have the following paragraph added: For all of the items listed above, the Commission hereby establishes the following procedures with regard to a Certificate of Non-Applicability. Application for said certificates may be filed during any working day with the Secretary of the Commission. Within one working day of the filing of said application, the Secretary of the Commission shall poll the members of the Commission to obtain their judgment concerning the application. If a majority of the members of the Commission concur with the application, a Certificate of Non-Applicability shall be issued. In cases when there is doubt by a majority of the members of the Commission as to whether a Certificate of Non-Applicability or a Certificate of Appropriateness shall govern, or in cases when a majority of the members of the Commission do not concur with the application, the Secretary shall so notify the applicant within one (1) week of the time of the filing of the application and the application shall be brought before the next regular meeting of the Historical Commission.

3. Adopted February 22, 1979 — Article VII, Open Meetings and Public Hearings, paragraph two shall read as follows: The New Bedford Historical Commission shall hold a public hearing when deciding on Certificates of Appropriateness, Certificates of Non-Applicability, or Certificates of Hardship as prescribed in Article VIII, or other such purpose as the Commission deems necessary. The Commission shall give notice of such public hearings by (a) posting notification of such hearing in the Office of the New Bedford City Clerk at least fourteen (14) days prior to such hearing; (b) by advertising in the New Bedford Standard Times at least fourteen (14) days before the hearing; (c) by mailing at least fourteen (14) days before the hearing, postage prepaid, a copy of such notification to (1) applicant, (2) to the owners of all adjoining property materially affected thereby as they appear on the most recent real estate tax list of the Board of

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Assessors, (3) to the New Bedford Planning Board, (4) to any person filing written request for notice of hearings, such request to be renewed yearly in December, and (5) to such persons as the Commission shall deem entitled to notice.

4. Adopted March 7, 1979 — filing fee for a public hearing shall be changed from ten (\$10.00) dollars to twenty-five (\$25.00) dollars. Article VIII, Determination of Application. Also see Amendment Number 1.

5. Adopted May 2, 2001 — Article IV, Commission membership shall be amended by deleting “one (1) representative and alternate from the New Bedford Redevelopment Authority” and replacing it with “one (1) representative and alternate from the National Park Service.”